

AMENDED IN SENATE JUNE 9, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2039

Introduced by Assembly Member Muratsuchi

February 20, 2014

An act to amend Section 2079.23 of, *and to add Section 1812.610 to*, the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 2039, as amended, Muratsuchi. Real property sales: ~~–auction companies: liability.~~ *auctions.*

Existing law regulates the activities of auctioneers and auction companies and prohibits, with a certain exception, a person from causing or allowing any person to bid at a sale for the sole purpose of increasing the bid on any item or items being sold by the auctioneer. Existing law defines an auction in this regard and excepts from this definition a sale of real estate. A violation of these provisions is a misdemeanor generally punishable by a fine of up to \$1,000, or by imprisonment for not more than a year, unless another penalty is specified.

This bill would, with respect to an auction that includes the sale of real property, prohibit a person from causing or allowing any person to bid at a sale for the sole purpose of increasing the bid on any real property being sold by the auctioneer. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law requires listing and selling agents, as defined, to provide sellers and buyers in a residential real property transaction with a

disclosure form, as prescribed, containing general information on real estate agency relationships. Existing law authorizes a contract between a principal and agent, in this context, to be modified to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties.

This bill would prohibit a lender or an auction company that is retained to control aspects of a residential real property transaction from requiring, as a condition of receiving a lender's approval of the transaction, a homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company and would declare a clause, provision, covenant, or agreement in violation of this prohibition to be against public policy, void, and unenforceable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 1812.610 is added to the Civil Code, to*
- 2 *read:*
- 3 *1812.610. (a) Notwithstanding Section 1812.601, for purposes*
- 4 *of this section, an auction includes the sale of real property and*
- 5 *an "auctioneer" means any individual who is engaged in, or who*
- 6 *by advertising or otherwise holds himself or herself out as being*
- 7 *available to engage in, the calling for, the recognition of, and the*
- 8 *acceptance of, offers for the purchase of real property at an*
- 9 *auction.*
- 10 *(b) A person shall not cause or allow a person to bid at a sale*
- 11 *for the sole purpose of increasing the bid on any real property*
- 12 *being sold by the auctioneer, including, but not limited to, stating*
- 13 *any increased bid greater than that offered by the last highest*
- 14 *bidder when, in fact, no person has made an increased bid.*
- 15 ~~SECTION 1.~~
- 16 *SEC. 2. Section 2079.23 of the Civil Code is amended to read:*

1 2079.23. (a) A contract between the principal and agent may
2 be modified or altered to change the agency relationship at any
3 time before the performance of the act which is the object of the
4 agency with the written consent of the parties to the agency
5 relationship.

6 (b) A lender or an auction company retained by a lender to
7 control aspects of a transaction of real property subject to this part,
8 including validating the sales price, shall not require, as a condition
9 of receiving the lender's approval of the transaction, the
10 homeowner or listing agent to defend or indemnify the lender or
11 auction company from any liability alleged to result from the
12 actions of the lender or auction company. Any clause, provision,
13 covenant, or agreement purporting to impose an obligation to
14 defend or indemnify a lender or an auction company in violation
15 of this subdivision is against public policy, void, and unenforceable.

16 *SEC. 3. No reimbursement is required by this act pursuant to*
17 *Section 6 of Article XIII B of the California Constitution because*
18 *the only costs that may be incurred by a local agency or school*
19 *district will be incurred because this act creates a new crime or*
20 *infraction, eliminates a crime or infraction, or changes the penalty*
21 *for a crime or infraction, within the meaning of Section 17556 of*
22 *the Government Code, or changes the definition of a crime within*
23 *the meaning of Section 6 of Article XIII B of the California*
24 *Constitution.*